

DETAILED ACTION

Receipt is acknowledged of the information disclosure statement filed
12/09/2011.

The following provisional obviousness-type double patenting rejection is cited.
Applicant should note however, that the application has been allowed. No patent
number has been assigned as of yet. Applicant should therefore treat this as a non-
provisional rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 14, 17-19, 21-24, 28, 31, 35-37, 39-41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14-19, 21-24, 27-31, 34 of copending Application No. 12/021,546 (US'546). Although the conflicting claims are not identical, they are not patentably distinct from each other because US'546 claims a composition and drug delivery vehicle for inhibiting adhesions (claim 1) using delivery vehicles (claims 3 and 15) of Pemirolast (claim 2). Therapeutic agents are set out in claim 6, Dosage of Pemirolast is found in claim 11. The vehicle may comprise a polymer selected from the group set out in claim 16. Carrier characteristics are set out in claims 17-19. As such, those of ordinary skill would expect similar therapeutic effects on adhesions given the claims of US'546. The instant claims would have been obvious to one of ordinary skill at the time of invention given the claims of US'546.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

No claims are allowed. However, the filing of a terminal disclaimer as cited above would overcome the obviousness-type double patenting rejection and place the application in condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARLOS AZPURU whose telephone number is (571)272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fereydoun G. Sajjadi can be reached on (571) 272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos A. Azpuru/
Primary Examiner, Art Unit 1617

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